
Statement of the case.

KELLY v. OWEN ET AL.

1. The act of Congress of February 10th, 1855, which declares "that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen," confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide.
2. The terms "married," or "who shall be married," in the act, do not refer to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman, who under previous acts might be naturalized, is in a state of marriage to a citizen, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers citizenship upon her.
3. The object of the act was to allow the citizenship of the wife to follow that of her husband, without the necessity of any application for naturalization on her part.
4. The terms, "who might lawfully be naturalized under the existing laws," only limit the application of the law to free white women.

APPEAL from the Supreme Court of the District of Columbia.

The case was this:

In 1848, one Miles Kelly, a native of Ireland, emigrated to the United States, and settled in the District of Columbia. In January, 1853, he married Ellen Duffy, and in May, 1855, was naturalized. He subsequently acquired several lots in the city of Washington, and died in March, 1862, seized and possessed of them, intestate and without issue; but leaving to survive him, in the United States, the said Ellen, his widow, and two sisters, Ellen Owen and Margaret Kahoe. His widow claimed the residue of his estate, after the payment of debts, to the exclusion of his sisters, Mrs. Owen and Mrs. Kahoe. These set up that they were entitled to a share of the estate, as the heirs-at-law of the deceased, and brought the present suit on the equity side of the Supreme Court of the District, for the sale or partition of the estate. The court decided in favor of the widow, and by its decree gave her the entire estate.

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From this decree the sisters appealed to the Supreme Court in banc; and by this latter court the decree was reversed. The widow then appealed to this court.

On the 10th of February, 1855, Congress passed an act,* entitled "An act to secure the right of citizenship to children of citizens of the United States, born out of the limits thereof," the second section of which provides, "that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."

All the parties, the widow and the two sisters, were aliens by birth, but they asserted that they became citizens by their respective marriages. Whether this was so or not, depended upon the construction given to the section of the act of 1855, above quoted.

Ellen, the widow, arrived in the United States in 1837, between the age of fourteen and fifteen, and had remained in the country ever since.

The sister, Ellen Owen, arrived in 1856, and was married to Edward Owen in 1861. He was naturalized in 1835. The sister, Margaret Kahoe, arrived in the United States in 1850, and was married to James Kahoe in 1852. He was naturalized in 1854.

The case was submitted by *Messrs. Phillips and R. J. Brent*, for the appellant, and by *Mr. W. J. Miller*, contra.

Mr. Justice FIELD delivered the opinion of the court.

This is a suit in equity, for the sale or partition of certain real estate, situated within the District of Columbia, of which Miles Kelly was seized at the time of his death, in March, 1862. The deceased died intestate, and without issue, leaving surviving him, in the United States, a widow, Ellen, and two sisters, Ellen Owen and Margaret Kahoe. The widow claimed the entire estate, after the payment of the

* 10 Stat. at Large, 604.

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debts of the deceased, to the exclusion of the sisters, who claimed that they were entitled, as his heirs-at-law, to a share of the same. The court rendered a decree in favor of the widow, and the sisters appealed to the Supreme Court of the District, where the decree was reversed, the latter court holding that the sisters were entitled to a share of the estate.

The case turns upon the construction given to the second section of the act of Congress of February 10th, 1855, which declares "that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."*

As we construe this act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide. The terms "married," or "who shall be married," do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that, whenever a woman, who under previous acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers, under the act, citizenship upon her. The construction which would restrict the act to women whose husbands, at the time of marriage, are citizens, would exclude far the greater number, for whose benefit, as we think, the act was intended. Its object, in our opinion, was to allow her citizenship to follow that of her husband, without the necessity of any application for naturalization on her part; and, if this was the object, there is no reason for the restriction suggested.

The terms, "who might lawfully be naturalized under the existing laws," only limit the application of the law to free white women. The previous naturalization act, exist-

* 10 Stat. at Large, 604.

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ing at the time, only required that the person applying for its benefits should be "a free white person," and not an alien enemy.*

A similar construction was given to the act by the Court of Appeals of New York, in *Burton v. Burton*,† and is the one which gives the widest extension to its provisions.

It follows, from these views, that the widow and the two sisters were citizens of the United States upon the decease of the intestate husband. The widow and Margaret Kahoe became such on the naturalization of their respective husbands, and Ellen Owen became such on her marriage. The sisters are therefore entitled to share with the widow in the estate of the deceased, and the decree of the Supreme Court of the District must be

AFFIRMED.

EWING v. HOWARD.

1. Usury being a defence that must be strictly proved, a court will not presume that a note dated on one day for a sum payable with interest from a day previous was for money first lent on the day of the date only.
2. Where a defendant on suit upon such a note wishes to rely at any time on usury as a defence, he should raise the question in some form in the court below. If this is not done the defence cannot be made here.

ERROR to the Circuit Court for the Middle District of Tennessee.

A statute of Tennessee, passed in 1860,‡ and which by its terms was to take effect from the 1st of September of that year, allowed 10 per cent. interest (instead of 6 per cent., a former rate) to be taken for money lent, provided that such agreement were expressed "on the face of the contract," whether evidenced by bond, bill, note, or other written instrument. The same statute, however, provided, that if any greater amount of interest than 10 per cent. was paid,

* Act of April 14th, 1802, 2 Stat. at Large, 153. † 38 New York, § 73.

‡ Sessions Act, chap. 41, § 1, p. 31.